

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. ASHLEY ELLEN ROSS, Defendant.	3:17-CR-30075-RAL ORDER DENYING SECOND MOTION FOR COMPASSIONATE RELEASE
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Defendant Ashley Ellen Ross filed a second motion requesting compassionate release under the First Step Act's amendment to 18 U.S.C. § 3582(c)(1)(A). Doc. 183. On January 5, 2021, the Federal Public Defender for the Districts of South Dakota and North Dakota docketed a notice of intent not to supplement Ross's motion. Doc. 184. The Government opposes the motion. Doc. 186. For the following reasons, this Court denies defendant's second motion for compassionate release.

I. Discussion

The background of Ross's case was set forth in detail in the Opinion and Order on Motion for Compassionate Release dated October 13, 2020. Doc. 177. Ross appealed that order and the United States Court of Appeals for the Eighth Circuit summarily affirmed the denial of compassionate release on October 26, 2020. Doc. 181. Ross's arguments for compassionate release in the instant motion are not substantially different than the arguments this Court previously rejected. See Docs. 177, 183. Ross does not point to any changes in her medical conditions or other circumstances that would warrant compassionate release under U.S.S.G. § 1B1.13, comment notes 1(A)–(D). Moreover, Ross appears not to have exhausted her administrative remedies by

first presenting this request to the warden of her facility as required by the First Step Act. See 18 U.S.C. § 3582(c)(1)(A); see also Doc. 186 at 2–3.

Ross is currently incarcerated at FMC Lexington, an administrative security medical center with an adjacent minimum-security satellite camp in Lexington, Kentucky. Doc. 183; see also Find an Inmate, Fed. Bureau of Prisons, <https://www.bop.gov/inmateloc/> (last visited Mar. 2, 2021). Under her current status in the Bureau of Prisons (BOP), she has a projected release date of June 3, 2023. See Find an Inmate, Fed. Bureau of Prisons. Ross is 33 years old. Id.

FMC Lexington currently has eight active inmate infections of COVID-19 and four active COVID-19 cases among staff; 738 inmates and 73 staff have recovered from the illness, and the facility has reported nine inmate deaths. See BOP: COVID-19 Update, <https://www.bop.gov/coronavirus/> (last visited Mar. 2, 2021). The total inmate population at FMC Lexington is currently 1,115 persons. <https://www.bop.gov/locations/institution/lex> (last visited Mar. 2, 2021). Assuming a static population, this means that over 67% of the inmates at FMC Lexington have contracted COVID-19 and less than 1% have died as a result. Despite the widespread infiltration of the virus, FMC Lexington appears to be taking appropriate measures to treat and care for inmates who contract COVID-19. No measures are 100% effective, and COVID-19 continues to be a health concern in correctional institutions as well as in the general public. Nevertheless, “[t]he mere existence of COVID-19 in society and the possibility that it may spread to a particular prison alone cannot independently justify compassionate release, especially considering BOP’s statutory role, and its extensive and professional efforts to curtail the virus’s spread.” United States v. Raja, 954 F.3d 594, 597 (3d Cir. 2020).

This Court is familiar with the precautions implemented by the BOP to protect inmates from COVID-19. See BOP Implementing Modified Operations,

https://www.bop.gov/coronavirus/covid19_status.jsp (last visited Mar. 2, 2021). Recently, the BOP has also implemented a COVID-19 vaccination program. See BOP: COVID-19 Update, <https://www.bop.gov/coronavirus/> (last visited Mar. 2, 2021). As of March 2, 2021, 60,037 doses have been administered systemwide. Id. These numbers are increasing daily. At FMC Lexington, 270 staff and 127 inmates have been fully inoculated as of March 2, 2021. BOP: Learn More About Vaccinations and View Individual Facility Stats, <https://www.bop.gov/coronavirus/> (last visited Mar. 2, 2021). According to the BOP, those inmates who wish to receive the vaccine will have an opportunity to do so, but

[w]hen an institution receives an allocation of the vaccine, it is first offered to full-time staff at that location, given that staff - who come and go between the facility and the community - present a higher potential vector for COVID-19 transmission. Vaccinating staff protects fellow staff, inmates at the facility, and the community.

Id.

Despite the risks posed by COVID-19, this Court does not find “extraordinary and compelling reasons” to justify compassionate release for Ross. For the reasons explained in greater length in this Court’s prior Opinion and Order on Motion for Compassionate Release, Doc. 177, Ross has not shown entitlement to a grant of compassionate release.

II. Conclusion and Order

Therefore, it is hereby

ORDERED that Ross’s second motion for compassionate release, Doc. 183, is denied.

DATED this 2nd day of March, 2021.

BY THE COURT:



ROBERTO A. LANGE
CHIEF JUDGE